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Conklin, 111 Cal. 616. And an instruction which singles out certain proved facts and authorizes a conviction for murder thereon, if believed to be true, ignoring other facts that tend to mitigate, or excuse the killing, is erroneous, *Farrell v. Commonwealth*, 7 Ky. L. Rep. 676. The withholding of the exposition of the law on the elements of self-defense has the same result or effect as to authorize a conviction on a set of facts singled out, ignoring the other related facts. Again it is proper to refuse to charge that in criminal cases, especially homicide, the statements made by the defendant are of the utmost and essential importance. *State v. Friedrich*, 4 Wash. St. 204. DOWDELL, J., said that if the deceased made such a demonstration when he first came in sight of the defendant, as would reasonably impress the defendant, and did impress him, that he was in peril of his life or great bodily harm, and that there was no reasonable mode of escape or retreat, and if the defendant was free from bringing on the difficulty, and did not encourage or willingly enter into it, then the defendant could not be deprived of his plea of self-defense, although he might have cursed the deceased and said that he would kill him. The following cases support this reasoning, and further, that "when there is evidence to show self-defense, the law should be explained on it." *Souey v. State*, 81 Tenn. (13 Lea) 472. *Short v. State*, 15 Tex. App. 370. More than this, the defendant might have made the statement without the remotest idea of putting into execution the threat. None of these facts were left to the consideration of the jury. The charge asserted as a matter of law that notwithstanding all of the elements of self-defense may have existed, yet if the defendant cursed his adversary, and said that he would kill him, he would thereby be deprived of his plea of self-defense. The fact that the decision of the court was rendered with a dissenting vote of three to four, leaves a reasonable doubt as to the correctness of the charge.

COVENANTS—WARRANTY—CLAIMS "BY, THROUGH OR UNDER" GRANTOR—EMINENT DOMAIN.—The grantor owned land subject to an easement, in the public, to maintain a sewer, acquired by eminent domain. Grantor made a conveyance to the grantee in which he covenanted to "warrant and defend the same to the said grantees and their heirs and assigns against the lawful claims and demands of all persons claiming by, through, or under me." *Held*, that an independent title in land is acquired by condemnation of an easement, and the restricted covenant of warranty is not broken thereby. *Weeks et al. v. Grace* (1907), — Mass. —, 80 N. E. Rep. 220.

The majority base their holding upon the grounds that the title acquired by eminent domain is a new and independent title, original rather than derivative. That it is analogous to a tax title which seems to be a new title and not merely a sum of all the old titles. *Hefner v. The North Western Insurance Co.*, 123 U. S. 747 and 751; *Brewer v. Dist. of Columbia*, 5 Mackay, 274, 278. While the two dissenting justices are of the opinion that it is not an independent paramount title, but is merely the exercise of the inherent sovereign power to compel a holder of property to give it up and transfer it for a full consideration. And that the covenant should not be narrowly con-

strued, and the taker in such case, claims "by, through or under" the former holder of the title who is paid for it by the taker. At one time the right of eminent domain was considered to be a kind of reserved right or estate remaining in the sovereign as paramount to the individual title. PUFFENDORF, I. 8 c. 5 Sec. 3, called it the "exercise of transcendental propriety." As though its exercise was the resumption of possession of that which it had previously granted to the citizen upon condition that it might be resumed to meet the requirements of the public. See *Commonwealth v. Alger*, 61 Mass. 90; *Todd v. Austin*, 34 Conn. 78. This view is not approved by the weight of authority and reason at the present time. It is considered to be a necessary attribute of sovereignty and estate rather than a reserved right. *Noll v. Dubuque, B. & M. R. R. Co.*, 32 Ia. 66; *Bloodgood v. M. & H. R. R. Co.* (N. Y.), 18 Wend. 9, 57; LEWIS EM. DOM. § 3; RANDOLPH, § 3. The question as to whether it is an original or derivative title does not seem to be definitely settled. It is not often directly alluded to in this phase. In 15 Cyc. 1020 it is said that "the title acquired by condemnation proceedings is not one of privity but of a character that is sometimes denominated as a new title." Citing *Emery v. Boston Term. Co.*, 178 Mass. 172, 86 Am. St. Rep. 473; see also *Goodyear Shoe Co. v. Machy Co.*, 176 Mass. 115; *Dingley v. Boston*, 100 Mass. 554, 559; cited by this court. Contrary inferences would be drawn from such expressions as: "Condemnation can pass no greater title or right than the parties have against whom proceedings are had." And "condemnation proceedings are no more than a compulsory sale of all the owner's interest." The *Charleston & Western Car. R. R. Co. v. Hughes*, 105 Ga. 1; *Anderson v. Rochester, Lockport and Niagara Falls R. R. Co.*, 9 How. Pr. (N. Y.) 553. There seem to be no cases that are directly in point.

CRIMINAL LAW—EXCLUSION OF PUBLIC FROM TRIAL.—The defendant was tried and convicted of rape. In the course of the trial the prosecutrix was required to minutely describe the details of the offense. The presence of the crowd in the court room, however, so embarrassed the prosecutrix that the prosecution could not elicit a statement full enough to put the proper evidence before the jury. The court thereupon, against the objection of the defendant, ordered all persons excluded from the court room while the prosecutrix gave her testimony. Held, that such exclusion for a temporary purpose only was not a denial of the right of a public trial to the defendant. *State v. Callahan* (1907), — Minn. —, 110 N. W. Rep. 342.

Upon this point it was recently held in Ohio that exclusion of the public from the court room on account of the character of the testimony was a denial of a public trial. In that instance, however, the exclusion was for the entire trial, and such a case is distinguished in the principal case. However, as pointed out in a dissenting opinion, it is difficult to see where the line is to be drawn if exclusions of the kind in the principal case are allowed. If the public can be excluded while one witness testifies why not while others or all others testify? For a further discussion of this principle and citation of cases see 5 MICHIGAN LAW REV. 471.